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SERVICE DATE – NOVEMBER 18, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR CALIFORNIA
WESTERN RAILROAD, INC.

v.

NORTH COAST RAILROAD AUTHORITY, d/b/a NORTHWESTERN PACIFIC
RAILROAD

Decided: November 17, 2005

In a decision served on July 27, 2005, the Board denied a complaint for damages filed by Michael H. Meyer, the trustee in bankruptcy for California Western Railroad, Inc. (CWR), against North Coast Railroad Authority (NCRA), d/b/a Northwestern Pacific Railroad. In that decision, we found that NCRA had not violated its common carrier obligation at 49 U.S.C. 11101(a) and also dismissed as moot a related petition for partial revocation in STB Ex Parte No. 346 (Sub-No. 25B), Rail General Exemption Authority—Lumber or Wood Products—Petition for Partial Revocation. Our decision, including our factual findings, was based on the information presented in CWR's complaint and petition to revoke a commodity exemption applicable to the traffic at issue, NCRA's response to these filings, NCRA's motion to dismiss, and CWR's response to the motion to dismiss.

On September 21, 2005, Mr. Meyer filed a petition to reopen this proceeding, arguing that the Board committed material error in denying the complaint.¹ He also asks that we receive into the record evidence contained in two attached verified statements. NCRA filed a reply to the petition on October 11, 2005, including an attached verified statement, in which it argues that the Board did not commit material error, should not consider Mr. Meyer's newly submitted evidence, and that, even with that evidence, should still deny the petition for reopening. On the same date, NCRA also filed a motion to strike the two verified statements submitted in support of the petition as containing newly raised but not "new" evidence, and the related arguments of counsel. On October 27, 2005, Mr. Meyer filed a reply in opposition to NCRA's motion to strike.

¹ Petitioner also sought judicial review of the Board's action. Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc. v. Surface Transportation Board and United States of America, No. 05-75440 (9th Cir. filed Sept. 20, 2005).

To ensure that Mr. Meyer has an opportunity to fully express his position, we will reopen this proceeding pursuant to our authority at 49 U.S.C. 722(c) and permit further filings based on the following schedule: Mr. Meyer's opening statement, containing all arguments and evidence in support of his position on behalf of CWR, will be due 20 days from the service date of this decision; all of NCRA's evidence and arguments in reply will be due 10 days thereafter; and Mr. Meyer's rebuttal will be due 5 days after NCRA's reply.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The following procedural schedule for the filing of statements is established:

December 8, 2005 — Mr. Meyer's opening statement due.

December 19, 2005 — NCRA's reply due.

December 23, 2005 — Mr. Meyer's rebuttal due.

3. NCRA's motion to strike is denied as moot.
4. This decision is effective on the date of service.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary